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74920 Federal Register / Vol. 45, No. 221 / Thursday, November 13, 1980 / Rules and Regulations**CENTRAL INTELLIGENCE AGENCY****32 CFR Part 1900****Public Access to Documents and Records and Declassification Requests****AGENCY:** Central Intelligence Agency.**ACTION:** Final rule.**EFFECTIVE DATE:** November 13, 1980.**§ 1900.25 Fees for records services.**

(a) Search and duplication fees shall be charged according to the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. Records shall be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction of the charge is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Thus, the Coordinator shall determine the existence and extent of any identifiable benefit which would result from furnishing the requested information and he shall consider the following factors in making this determination:

(1) The public or private character of the information sought;

(2) The private interest of the requester.

(3) The numbers of the public to be benefited;

(4) The significance of the benefit to the public;

(5) The usefulness of the information to the public; and

(6) The quantity of similar or duplicative information already in the public domain. In no case will the assessment of fees be utilized as an obstacle to the disclosure of the requested information. The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. Fees shall not be charged where they would amount, in the aggregate, for a request, or a series of related requests, to less than \$6. Denials of requests for fee waivers may be appealed by writing to the Executive Secretary of the Information Review Committee, via the Coordinator.

(b) In order to protect the requester and the Agency from large, unexpected fees, when it is anticipated that the charges will amount to more than \$25, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for his commitment to pay all reasonable search and duplication fees. At his option, the requester may indicate in advance a dollar limitation to the fees. In such an event, the Coordinator shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure. In those cases where the Coordinator estimates that the fees will be substantial, an advance deposit of 50 percent of the estimated fees will be required, in those cases where there is reasonable evidence that the requester may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice or request shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(c) The schedule of fees for services performed in responding to requests for Agency records is established as follows:

(1) For each one quarter hour, or fraction thereof, spent by clerical personnel in searching for a record, \$1.50;

(2) For each one quarter hour, or fraction thereof, spent by professional personnel in searching for a record, \$3.50;

(3) For each on-line computer search, \$11.00;

(4) For each off-line (batch) computer search of Central Reference files, \$27.00;

(5) For all other off-line computer searches of Agency files, \$8.00 per minute of Central Processing Unit (CPU) time;

(6) For copies of paper documents in sizes not larger than 8½ × 14 inches, \$0.10 per copy of each page;

(7) For duplication of non-paper media (film, magnetic tape, etc.) or any document that cannot be reproduced on a standard office copier, actual direct cost; and

(8) For extra copies of reports, maps, reference aids, and other Agency publications, actual cost.

(d) Inasmuch as the Agency's systems of records are highly decentralized, several computer searches may be required to process a request, depending upon its scope. The computer search costs given in paragraph (c), of this section, do not include whatever professional clerical search time is needed to determine whether the records located are in fact responsive to the request.

(e) Search fees are assessable even when no records pertinent to the requests, or no releasable records are found, provided the requester has been advised of this fact and he has, that notwithstanding agreed to incur the costs of search.

(f) For requests which have accrued substantial search and duplication fees, or for requests for records which have been previously released, or where there is reasonable evidence that the requester may possibly fail to pay the accrued fees, then, at the discretion of the Coordinator, the requester may be required to pay the accrued search and duplication fees prior to the actual delivery of the requested records; otherwise, the requester shall be billed for such fees at the time that the records are provided. Payment shall be remitted by check or money order, made payable to the Treasurer of the United States, and shall be sent to the Coordinator. No appeals or additional requests shall be accepted for processing until the requester has paid all outstanding charges for services rendered under this part.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant.

Civil Action No. 84-2891

O R D E R

This matter has come before the Court on plaintiff's application for a temporary restraining order and counsel have been heard in open court. It appears to the Court that plaintiff has delayed unduly with regard to his request of June 28, 1983, and that the defendant should have an opportunity to search for and process records responsive to plaintiff's request dated August 24, 1984. It is, therefore, this 17th day of September, 1984,

ORDERED that plaintiff's application for a temporary restraining order is denied; and it is further

ORDERED that when defendant files its answer, which is due on October 17, 1984, it shall include a statement as to when the search for and processing of responsive documents shall be completed; and it is further

ORDERED that, if in the meantime particular documents are located which can readily be released to plaintiff, the defendant may do so in its discretion without prejudice to the schedule it proposes when it files its answer.


GERHARD A. GESELL
United States District Judge

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALITE SAINVIL

CIVIL ACTION

vs.

UNITED STATES DEPARTMENT OF STATE
and UNITED STATES CENTRAL INTELLIGENCE
AGENCY

NO. 84-0108

FILED

APR 6 1984

MICHAEL J. ...

BEFORE WEINER, J.

AND NOW, this 6th day of APRIL, 1984,

it is ORDERED that pursuant to agreement of counsel the above-entitled matter is Dismissed without Prejudice. The case is to remain in status quo and the Statute of Limitations is tolled.

It Is Further agreed that if the transaction of this matter is not resolved between the parties, this action maybe reinstated and placed on the active docket by any of the parties writing directly to the Court.

ATTEST:

OR

BY THE COURT:

BY:

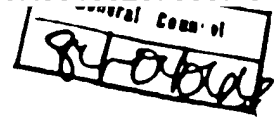
DEPUTY CLERK

JUDGE

4/9/84 copy mailed to:

L. Rieser, Esq.

A. Ewing, Jr. A. U. S. Atty
(L. E.)



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANTHONY SUMMERS,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY
et al.,

Defendants.

Civil Action No. 84-2754

FILED

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S T I P U L A T I O N

JAMES F. DAVEY, Clerk

Pursuant to the discussion at the status call on October 24, 1984, the parties stipulate as follows, subject to the Court's approval.

I. Plaintiff filed this action on September 10, 1984, seeking records from the following agencies or components of the United States government:

- A. The Federal Bureau of Investigation (FBI)
- B. The Central Intelligence Agency (CIA)
- C. The Department of the State
- D. The Department of the Treasury
- E. The Department of Justice
 - 1. The Criminal Division
 - 2. The Office of the Attorney General
 - 3. The Office of Intelligence Policy and Review

Plaintiff seeks these documents to assist in research on a book on the death of movie actress Marilyn Monroe.

II. The agencies and components have been processing plaintiff's requests both before and after this case was filed.

In addition, continuing and extensive discussions have taken place between counsel for the parties and agency representatives regarding the handling of plaintiff's requests.

III. This stipulation has been entered in order to accommodate four concerns:

- A. The orderly disposition of this lawsuit.
- B. Plaintiff's desire to receive materials pertinent to his research within a reasonable time.
- C. The need to reduce the tasks presented to the agencies in order to accomplish III B above.
- D. The need to process the records in a careful manner, so that plaintiff will receive that which he is entitled to, while at the same time assuring that exempt information is properly protected, e.g., classified material, internal memoranda, confidentiality and legitimate privacy interests.

IV. Because of the limited amount of its potentially responsive material, the State Department has completed its processing of the documents, and has reported the results to plaintiff, furnishing certain documents. The Treasury Department and the Justice Department components other than the FBI have completed their searches and reported to plaintiff that they have no responsive documents.

V. Plaintiff and defendant FBI have agreed to a reformulation of the scope of several of plaintiff's Freedom of Information Act (FOIA) requests as specifically set forth below. This

reformulation recognizes the desire on the part of the plaintiff to receive as much information as soon as possible on the ultimate subject of his various FOIA requests; that being the life and death of Marilyn Monroe and her relationships with various public figures, including Robert F. and John F. Kennedy. This reformulation also recognizes the voluminous amount of information in FBI files relevant to the subject of the actual individual request which appears to have no relevance to the research on plaintiff's book. For example, in the Spindel request (Request 245455, Count II) Federal Bureau of Investigation Headquarters (FBIHQ) files contain approximately 6,000 pages relating to Spindel, but very few references either to Marilyn Monroe or to the two areas plaintiff deemed related. Therefore, the reformulation will reduce the amount of processing yet to be addressed by the FBI and hasten its completion.

In general, records on each reformulated request will first be reviewed to determine if they bear in any reasonable manner on Monroe during the period 1961-1963 or late 1966 - early 1967. The dates 1961-1963 have been chosen because they represent the several years prior to and after her death. The late 1966 - early 1967 period was chosen because of allegations that certain wiretap tapes of Monroe's voice with others were confiscated in a raid by local authorities on Spindel's home. Once these records are reviewed, only that information pertinent to the reformulated request will be processed under the FOIA for release to plaintiff. It is understood that this stipulation controls the extent of the FBI's FOIA processing of the subjects discussed herein and that

those prior requests which have been reformulated are rendered moot by this stipulation.

This stipulation will also address the amount of material remaining to be processed under the reformulation and the approximate amount of time necessary to accomplish this. In addition, this stipulation will describe in general terms the material requested by plaintiff which has already been processed and released.

A. Marilyn Monroe: The FBI has already furnished plaintiff with previously processed material concerning Monroe. In addition, 25 "see" references (amounting to approximately 180 pages) must be processed for FOIA exemptions by the Disclosure Unit of the FBI's Freedom of Information Privacy Acts (FOIPA) section, Records Management Division (RMD). These "see" references must also be processed by the Classification Appeals and Affidavits Unit (CAAU) of the FBI's RMD to determine if classified information is contained in the "see" references. The FBI represents that: (1) The task of processing these documents to afford maximum releasability to plaintiff while insuring that applicable provisions of Executive Order 12356 (regarding National Security Information) are complied with is a time consuming one and accounts for a majority of the processing period. (2) In processing "see" references, it is necessary to examine not only the references themselves, but also other documents bearing on releasability, which may be extensive. (3) This review by the Classification Appeals and Affidavits Unit is also necessary for other portions of plaintiff's requests and this discussion similarly applies to those requests and will be noted as appropriate.

B. Novotny: Preprocessed material concerning Novotny had already been made available for release to plaintiff while 18 additional "see" references remained for processing. It has recently been determined that these "see" references are identical to material already provided plaintiff through the "Bowtie" request (discussed infra). Therefore, no further processing remains on Novotny.

C. Greenson: Eight "see" references amounting to approximately 20 pages must be processed by the CAAU and then returned to the Disclosure Unit for further processing and release to plaintiff.

D. Sukarno: One 160 page "main" file and 132 "see" references pertaining to Sukarno were reviewed according to the reformulated request and 40 "see" references amounting to approximately 100-130 pages were determined to be relevant and must be reviewed by CAAU and then returned to the Disclosure Unit for further processing and release to plaintiff. 1/

E. Field: 850 pages pertaining to Field must be reviewed by CAAU prior to review by the Disclosure Unit before release. Plaintiff has indicated that processing of the Field material is not a priority matter and therefore it is agreed that while this material will be processed, it will be done only after other priority processing has been completed. This will not be accomplished within the deadline covered by this stipulation.

1/ In the case of Sukarno, the request was reformulated to relate to Sukarno's sexual proclivities.

F. 94-37374: This file is identical to Hoover's "O&C" files on John F. Kennedy and has been preprocessed for release to other requestors. Arrangements are underway to forward this material to plaintiff.

G. Miller, Frasca, Chang, Renay: Plaintiff has been advised that without written authorization from these individuals, the FBI could neither confirm nor deny the existence of records pertaining to them because to do so would constitute an impermissible invasion of their personal privacy. Plaintiff has to date not provided these authorizations and therefore the FBI has not searched its central records systems indices for references to them. No action is, therefore, to be taken as to them.

G. Bowtie: Certain preprocessed material on "Bowtie" requested by plaintiff has been forwarded to him. 2/

H. Horan: Eight "see" references amounting to approximately 20 pages must be reviewed and processed by the Disclosure Unit, and, if classification implications are found, these references must also be reviewed by the CAAU.

I. Capell: The Disclosure Unit has reviewed approximately 1,600 pages of material pertaining to Capell with the objective of determining its relevance to the reformulated request. Material dated from 1961-1963 was reviewed for any connection to Marilyn Monroe, Robert F. Kennedy and/or either or both of their sexual proclivities or Monroe's suicide and none

2/ Plaintiff reserves the right to request that the "Bowtie" material be re-classified but it is agreed that such reclassification will not be accomplished in the time period specified herein.

were located. Therefore, no further processing of these files will be undertaken. 3/

.J. Spindel: In an effort to reduce the amount of processing necessary on the approximately 6,000 pages pertaining to Spindel, it was agreed that the various FBIHQ files would be grouped in beginning and ending date order and that only those files or references falling within the relevant dates would be reviewed for relevance to the reformulated request. It was agreed that files which fell within 1961-1963 and all of 1967 would be reviewed. For example, if a file was opened on January 2, 1960 and closed on January 1, 1962 it would be reviewed; conversely, if a file was opened on October 1, 1955 and closed on October 1, 1960, it would not be reviewed. Only those files which were open at some period within the relevant dates were reviewed. Based on these parameters, Special Agent Douglas S. Garrison of the FBI's Legal Counsel Division personally reviewed approximately 20 main files or "see" reference for information falling within the reformulated request. In addition to the general reformulation discussed earlier, this material was also reviewed to determine if it contained references to a raid by local authorities on Spindel's home in which tape recordings pertaining to Monroe were seized, or any lawsuit relating to said raid. Five references were located which are arguably within the scope of the reformulated request, one of which is a public source document. These documents will be

3/ During the parties' discussion of this stipulation, plaintiff requested an amplification of the reformulation as to Capell. The parties intend to present a supplemental stipulation in this respect on or before November 30, 1984.

reviewed by the Disclosure Unit for processing, and, if necessary by the CAAU, prior to release.

On February 16, 1984 after a request from plaintiff for records on Spindel, the New York Office of the FBI advised plaintiff that a search of the New York Office indices had not located any references to Spindel. After a review of FBIHQ files by SA Garrison, a number of communications from New York were noted, indicating that New York had records which they had failed to locate. Upon re-examination of the New York Office indices, records pertaining to Spindel were located and are currently being processed for release in accordance with the reformulation described herein. This processing will be completed within the time established by this stipulation.

J. Balletti, Ratterman: The FBI identified the Balletti materials and plaintiff's counsel informed the agency that he had received them for a different requestor. It was agreed that they would not be further processed. SA Garrison informed plaintiff's counsel that the Ratterman materials did not contain any reference to Marilyn Monroe or to her involvement with Robert F. Kennedy or John F. Kennedy. Plaintiff has requested that the public source material relating to Ratterman be processed. The FBI will do this, and will ascertain whether this can be accomplished within the time period specified herein.

VI. The FBI represents that it has committed considerable personnel and resources to the processing agreed upon in this stipulation, consistent with its huge backlog of FOIA requests in processing and litigation, many of which are under court deadlines. It is agreed that the FBI will complete the processing of plaintiff's

reformulated request within three months of the date of this stipulation. It is agreed that as material is processed, it will immediately be forwarded to plaintiff on a continuing basis.

Plaintiff has indicated that he desires that processing of the Monroe "see" references be accomplished first, followed, in order of priority, by Sukarno, Greenson and Moran.

VII. The CIA.

A. On 3 August 1983 plaintiff submitted a FOIA request to CIA for information pertaining to the following 12 persons:

Arthur Miller
Joe DiMaggio, Sr.
A. Frank Cappell
Judith Meredith
Fred Otash
Reed Wilson
Fred Bauersfeld
Frank Sinatra
Stanley Gerbobaz
Hyman Engleberg
Arthur James Balletti
Ralph Greenson

B. On 25 August 1983 defendant CIA responded to the plaintiff's FOIA request of 3 August by requesting biographic data on the following six persons:

Judith Meredith
Fred Bauersfeld
Fred Otash
Stanley Gerbobaz
Reed Wilson
Arthur James Balletti

C. Also in CIA's response of 25 August it requested statements authorizing the release of personal information on the following 10 persons:

Arthur Miller
Joe DiMaggio, Sr.
Judith Meredith
Fred Otash
Reed Wilson

Fred Bauersfeld
Frank Sinatra
Hyman Engleberg
Ralph Greenson
Arthur James Balletti

D. Further, in its letter of 25 August defendant CIA denied a fee waiver which had been requested by plaintiff in his letter of 3 August.

E. On 22 December 1983 plaintiff provided copies of death certificates pertaining to Frank A. Capell and Ralph R. Greenson.

F. On 11 January 1984 defendant CIA acknowledged receipt of the two aforementioned death certificates and reminded plaintiff that he had not made a commitment to pay search fees. Plaintiff was told that further processing of his request would be held in abeyance pending his commitment to pay search fees.

G. On 28 November 1983 plaintiff made a FOIA request to CIA for information pertaining to Fredrick Vanderbilt Field. Plaintiff enclosed a notarized privacy waiver from Mr. Field but did not make a fee commitment.

H. On 14 December 1983 defendant CIA acknowledged receipt of plaintiff's request pertaining to Field, and informed plaintiff that CIA would not begin processing this request until he had made a commitment to pay fees.

I. On 27 January 1984 plaintiff submitted a FOIA request to CIA for records pertaining to Bernard B. Spindel. Plaintiff enclosed a copy of Mr. Spindel's death certificate.

J. On 24 February 1984, CIA acknowledged receipt of plaintiff's request pertaining to Mr. Spindel. CIA also asked for Spindel's date of birth, and informed plaintiff that there

could be no waiver of search fees at that time and that processing of the Spindel request would be held in abeyance pending receipt of plaintiff's fee commitment and Mr. Spindel's date of birth.

K. On 19 April 1984 plaintiff submitted a FOIA request to CIA for records pertaining to Marie Novotny. A copy of Ms. Novotny's death certificate was enclosed with this correspondence. Plaintiff made no fee commitment in this request.

L. On 8 May 1984 defendant CIA acknowledged receipt of plaintiff's FOIA request of 19 April.

M. On 10 September 1984 plaintiff filed the instant civil action.

N. On 24 September 1984 plaintiff made the requisite fee commitments with respect to his requests for records pertaining to Spindel and Capell.

O. The Central Intelligence Agency has undertaken a thorough and diligent search of all appropriate records systems for records pertaining to Messers Capell and Spindel.

P. With respect to Mr. Capell no records were found.

Q. With respect to Mr. Spindel, CIA identified the following records which may be responsive to plaintiff's request:

- (1) 17 CIA documents consisting of approximately 45 pages; and
- (2) 15 FBI documents consisting of approximately 98 pages. (These documents are being referred to the FBI for direct response to the plaintiff.) 4/

4/ Until the FBI has had an opportunity to review these referred documents, it cannot estimate the time for their processing.

R. The responsive CIA documents pertaining to Mr. Spindel contain only a single, two-sentence, reference to Marilyn Monroe contained in a six page CIA document dated 20 February 1967.

VIII. Pursuant to the direction of this Court, attorneys for plaintiff and CIA have met and discussed the possibility of plaintiff narrowing his request. As a result of those discussions, plaintiff has agreed to narrow his request to include records pertaining to Mr. Spindel which mention or reflect a relationship or connection, of any kind, between Mr. Spindel and Marilyn Monroe.

IX. Defendant CIA has agreed in turn to provide within two days a copy of the document pertaining to Mr. Spindel which contains the single reference to Ms. Monroe. (CIA has no other documents responsive to the request as narrowed.) Although this document will be sanitized, the reference to Ms. Monroe will be released in its entirety.

X. Without further search fee commitments, defendant CIA will continue to hold plaintiff's remaining FOIA requests in abeyance. 5/

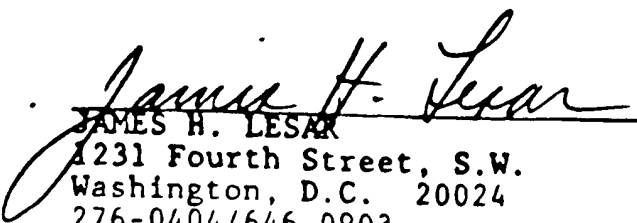
5/ On November 6, 1984, plaintiff's counsel orally stated to defendants' counsel that plaintiff's counsel is writing a letter making a fee commitment as to four additional individuals. The parties are discussing the formulation of those requests and the timing of their processing, and intend to supplement this stipulation with an additional stipulation on or before November 30, 1984. With these four individuals, plaintiff concluded the commitments which he is willing to make for searches on the subjects which are within the scope of this lawsuit.

XI. This action is hereby dismissed with prejudice as to all agencies and components except the FBI, except that, if documents are referred to any of the dismissed agencies and components, plaintiff does not waive his right to litigate as to the referred documents, and plaintiff reserves the right to litigate the fee waiver issue. In the event plaintiff should prevail on the fee waiver issue, he would not be foreclosed from litigating the issue of CIA's position of requiring a death certificate or authorization, where the request concerns living persons, before searching. See also footnote 5 above. In order not to interfere with the FBI's processing of documents, such litigation shall not take place before February 6, 1985.

XII. Each party shall bear its own costs and attorneys' fees, except as follows: in the event that plaintiff should choose to challenge exemptions invoked by the government, and should do so successfully, plaintiff reserves the right to seek attorneys' fees and costs solely for such challenge, and defendants reserve the right to oppose such application; plaintiff also reserves the right to seek attorneys' fees and costs if he successfully challenges denial of a fee waiver, and defendants reserve the right to oppose such application.

XIII. This action is dismissed without prejudice as to the FBI. Plaintiff reserves the right to move to reinstitute this action as to the FBI--which motion the FBI shall not oppose- on or after February 6, 1985. The reformulations of requests

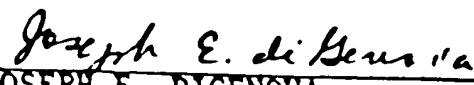
specified in this stipulation shall fully govern in any such
reinstated lawsuit.

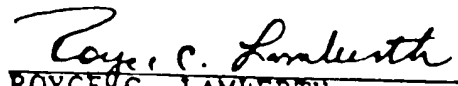

JAMES H. LESAR

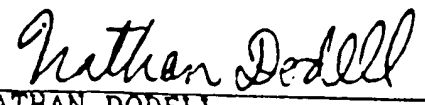
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Attorney for Plaintiff

Respectfully submitted,

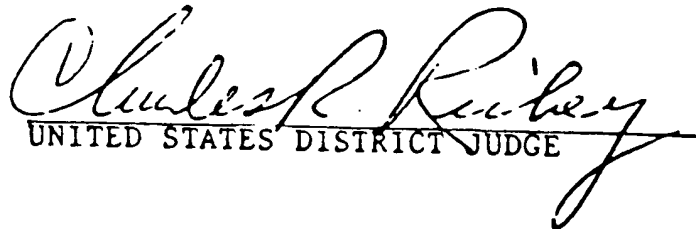

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Approved this 8th day of November, 1984


UNITED STATES DISTRICT JUDGE

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